

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4212 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PHARMACEUTICAL & CHEMICAL INDUSTRIES

Versus

UNION OF INDIA

Appearance:

MR BS PATEL for Petitioner

MR JAYANT PATEL Add.Cen.Govt.Pleader for respondent

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 28/05/98

ORAL JUDGEMENT

Rule. Mr. Jayant Patel, learned Additional Standing Counsel appearing for the respondents waives service of rule. On the facts and in the circumstances of the case, the matter is taken up for final hearing today.

2. Petitioner herein is the Company duly registered under the Companies Act, 1956. A show cause notice dated

1st August, 1995 was issued and served on the petitioner Co. calling upon it to show cause why the Central Excise duty of Rs.1,78,478-96 ps. should not be recovered from it under section 11-A of the Central Excise and Salt Act, 1944 for removal of Malaquin Injection of NIL rate `duty during 6-1-95 to 8-2-1995. After the notice was issued, the petitioner filed written statement. On October 15, 1997 respondent No. 2 has passed the order confirming the demand of the said amount with interest at the rate of 20% p.a. Being aggrieved by the said confirmatory order, on 28th January, 1998, the petitioner filed appeal before the respondent No. 3. Alongwith the said appeal, petitioner also preferred an application for interim stay. The respondent no.2 however intimated the petitioner to pay the sum of duty failing which it is also made clear that resorting to coercive measure, recovery thereof would be effected. This petition is therefore filed for necessary directions to respondents restraining them from taking any coercive actions for recovery of Rs.1,78,478-96, the demand of which is confirmed by order in the case namely Original 169/MP/97 dated 15/10/1997.

3. So long as the application for stay is pending before respondent No. 3, it would not be just and proper on the part of respondent no. 2 to resort to coercive measures and recover the amount. Hence in such facts and circumstances of the case, respondent No. 3 is required to be directed to disposed of the application for stay at the earliest. Accordingly, respondent No. 3 is directed to dispose of the application for stay preferred by the petitioner in an appeal filed by him before it within one month from the date of this order. Till then, respondent no. 2 shall not resort to coercive measures for realization of the amount. Rule is accordingly made absolute with no order as to costs.

(ccs)